UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,343	02/26/2004	Guy Hubert Stephane Sylvain Culeron	AA-615M3	3968

27752 7590 03/20/2008

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION - WEST BLDG.
WINTON HILL BUSINESS CENTER - BOX 412
6250 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
DOUYON, LORNA M	
ART UNIT	**PAPER NUMBER**
1796	

MAIL DATE	DELIVERY MODE
03/20/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/787,343	STEPHANE SYLVAIN CULERON ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,11 and 15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 11-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. Prosecution on the merits of this application is reopened on claims 1-9, 11-15 for the reasons indicated below.

2. Claims 1-9, 11-15 **stand** provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 and 11-15 of copending Application No. **10/787,266** in view of Van Dijk et al. (US Patent No. 5,663,136) for the reasons set forth in the previous office actions.

3. The rejection of claims 1-2, 4, 6-8, 11-15 under 35 U.S.C. 103(a) as being unpatentable over Loth et al. (US Patent No. 5,075,026) is withdrawn in view of Applicants' arguments.

4. The rejection of claim 3 under 35 U.S.C. 103(a) as being unpatentable over Loth in view of Fowler et al. (US Patent No. 5,635,469) is withdrawn in view of Applicants' arguments.

5. The rejection of claim 5 under 35 U.S.C. 103(a) as being unpatentable over Loth in view of Baeck et al. (US Patent No. 5,679,630) is withdrawn in view of Applicants' arguments.

6. The rejection of claim 9 under 35 U.S.C. 103(a) as being unpatentable over Loth as applied to the above claims, and further in view of Boehm et al. (US Patent No. 3,422,993) is withdrawn in view of Applicants' arguments.

Specification

7. The disclosure is objected to because of the following informalities: On page 17, lines 16, 18, 21 and 23, the copending application numbers should be updated as to the corresponding published applications, or patent numbers.

Appropriate correction is required.

Claim Objections

8. Claims 1, 3, 4 and 5 are objected to because of the following informalities:

(a) in claim 1, lines 5 and 8, it is suggested that "dishwashing" be added after "surfactant" to be consistent with the limitation in line 4;

(b) in claim 3, line 2, claim 4, line 1 and claim 5, line 1, it is suggested that "dishwashing" be added after "surfactant" to be consistent with claim 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. Claims 7, 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of claims 7, 11 and 12, the phrase "said high viscosity dishwashing composition" lacks support with respect to claim 1 which recites "high surfactant dishwashing composition".

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1-2, 4-8, 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petri et al. (US Patent No. 6,114,298), hereinafter "Petri", by itself, or in the alternative, in view of Focaracci (US Patent No. 4,646,973).

Petri teaches a microemulsion suitable for disinfecting a surface (see col. 2, lines 48-49), such as dishes (see col. 14, line 59), as well as animate surfaces (e.g., human skin, mouth and the like) comprising a surfactant, an aqueous phase comprising a bleach, and droplets dispersed in said aqueous phase, said droplets comprising an essential oil or an active thereof, and said droplets having a particle size of less than 100 nanometers (see abstract; col. 1, lines 6-12; col. 2, lines 48-53), which particle size is construed to read on "non-visible droplets of oil". The microemulsion comprise from 0.01% to 40% by weight of the total microemulsion of a surfactant, or mixtures thereof (see col. 5, lines 4-8). A composition comprising the upper limit concentration of the surfactant above would read on protomicroemulsion. The aqueous phase of the microemulsions comprises at least water (see col. 8, lines 58-63) and may comprise as

a preferred optional ingredient, a hydroxylated solvent (se col. 9, lines 51-53), such as glycol ethers (see col. 10, lines 1-25) and aliphatic alcohols such as ethanol (see col. 10, lines 45-53). The microemulsions may comprise as an optional ingredient, other solvents including terpene (see col. 11, lines 1-13), which terpene read on the "low water-soluble oil having a solubility in water of less than about 5000 ppm as required in claim 14. The microemulsion may further comprise a variety of other optional ingredients such as enzymes (see col. 11, lines 19-24). The microemulsion is also construed to read on Newtonian fluids. The microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, for example, spray dispenser, preferably in a trigger spray dispenser or in a pump spray dispenser, and may include manually operated foam trigger-type dispensers for example those disclosed in US Pat. No. 4,646,973 (see col. 16, lines 23-44). Petri, however, fails to specifically disclose the microemulsion in a foam trigger-type dispenser which generates a foam having a foam to weight ratio as those recited.

In the alternative, US Patent No. 4,646, 973 to Focaracci, which is cited in Petri at col. 16, lines 38-44, teaches an impingement foamer apparatus for producing a thick foam from a spray of liquid and air (see abstract). The apparatus produces a viscous, low velocity foam which does not "bounce back" but rather adheres to a target surface and does not "run" or "drip" from the target area or from the spraying apparatus (see col. 3, lines 23- 28).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the microemulsion into a foam trigger-type dispenser

because Petri teaches in col. 6, lines 23-44 that the microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, for example, a manually operated foam trigger-type dispensers, and to reasonably expect the foam trigger-type dispenser to generate a foam having a foam to weight ratio as those recited because similar ingredients and similar foam-generating dispenser have been utilized. In addition, with respect to the foam-generating dispenser generating a foam having a foam to weight ratio of greater than about 2 ml/l, the optimization of the generation of foam via the foam-generating dispenser would have been obvious to one of ordinary skill in the art at the time the invention was made because such parameter is recognized to have been result-effective variables. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima* facie case of obviousness. See *In re Boesch,* 61 7 F.2d 272, 276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575,1578, 16 USPQ2d 1934, 1936-37 Fed. Cir. 1990), and *in re Aller, 220* F.2d *454,456,* I05 USPQ 233,235 (CCPA 1955).

In the alternative, it would have been obvious to one of ordinary skill in the art at the time the invention was made to package the microemulsion of Petri into the impingement foamer apparatus of Focaracci because Petri teaches in col. 6, lines 23-44 that the microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, for example, a manually operated foam trigger-type dispensers as in Focaracci, and to reasonably expect the foam trigger-type dispenser of

Focaracci to generate a foam having a foam to weight ratio as those recited because the dispenser of Focaracci produces a viscous, low velocity foam which does not "bounce back" but rather adheres to a target surface and does not "run" or "drip" from the target area or from the spraying apparatus as taught in col. 3, lines 23- 28, which viscous foam would overlap on the recited foam to weight ratio.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petri, or Petri and Focaracci, as applied to the above claims, and further in view of Fowler et al. (US Patent No. 5,635,469) hereinafter "Fowler".

Petri, or Petri and Focaracci teach(es) the features as described above. Petri, or Petri and Focaracci, however, fail(s) to disclose a foaming dispenser with three meshes.

Fowler teaches a similar composition in a nonaerosol dispenser having three meshes (see col. 22, line 59 to col. 23, line 5). Foams containing relatively large diameter bubbles can be refined by forcing said foams through various foam refining means including screens, porous frits, porous media and combination thereof (see col. 19, lines 63-66).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the dispenser of Fowler having three meshes because such use would provide refined foams as taught by Fowler.

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petri, or Petri and Focaracci as applied to the above claims, and further in view of Boehm et al. (US Patent No. 3,422,993), hereinafter "Boehm".

Petri, or Petri and Focaracci teach(es) the features as described above. Petri, however, fails to specifically disclose a foam-generating dispenser comprising a sponge.

Boehm teaches a dispensing device and package for common household products for cleaning as well as personal products wherein the dispenser is provided with a porous material, for example the natural sponges (see col. 3, lines 48-66).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use sponge as the porous media in the dispenser of Petri, or Petri and Focaracci because it is known from Boehm that the common porous media in foam dispensing devices are sponges.

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-2, 11 and 12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 19 and 20 of copending Application No. **11/386,921**. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar foam-generating kit comprising an aerosol container and a high surfactant microemulsion or protomicroemulsion having similar surfactant system concentration differing only in that the copending application requires glycerol. The "comprising" language of the present claims, however, is open to the inclusion of other ingredients such as glycerol.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Harold Y Pyon/
Supervisory Patent Examiner, Art Unit 1796

/Lorna M. Douyon/
Primary Examiner
Art Unit 1796